



U.S. Department of Justice

Environment and Natural Resources Division

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February 4, 2011

Robert C. Bundy  
Dorsey & Whitney LLP  
1031 West Fourth Avenue, Suite 600  
Anchorage, AK 99501  
By Email: Bundy.Robert@dorsey.com

Re: United States v. Ionia Management, S.A.

Dear Mr. Bundy:

Pursuant to your request at the January 12, 2011, Special Master's Hearing, the government submits this response to Ionia Management's letter of January 28, 2011 regarding compliance of the Special Waste Oil Monitoring System ("SWOMS") with the Special Master's Scope of Work Order.

In their letter Ionia represents that the SWOMS system will be reprogrammed to generate hourly recordings that will capture and document the data that is currently being monitored by the system and to automatically transmit these hourly recordings to Ionia's home office. The government takes the position that this was already required by the Scope of Work document. To the extent the Special Master believes it was not, the government suggests that the Special Master amend the Scope of Work to reflect the changes that Ionia is making. The government does not believe it is useful to argue over whether or not Ionia was in compliance given the current changes being made. However, the government does think it is useful to explain its position on this issue for the benefit of all parties given that we are three plus years into probation.

In determining the operation of the SWOMS system it is important to understand how the system came to be mandated by the court. At Ionia's sentencing hearing in December of 2007 it was represented to Judge Arterton that Ionia was requiring their vessels to install:

**new pollution control equipment with what is commonly known as a white box which monitors every single drop of oil or waste that moves in the engine room and makes a recording, and that recording is then sent back to the company to review on a daily, or even an hourly basis if they want it...<sup>1</sup>**

The requirements of this "white box" were more fully discussed at a probation violation hearing on January 10, 2008. At the hearing Judge Arterton made clear that the oral order

<sup>1</sup> Transcript of Sentencing Hearing dated December 14, 2007 at pgs. 45-46

of the court referring to the "white box" as described in the sentencing transcript was controlling for the purposes of the required monitoring equipment.<sup>2</sup> Subsequently, the Scope of Work document was created which coined the phrase SWOMS. The Scope of Work required that SWOMS have "the capability to record, and the data be electronically sent to IONIA's shore-side office."<sup>3</sup> This sentence is footnoted to explain that the technology to transmit data independent of human intervention did not exist. Further, a one year time frame was given to either have it installed or provide an updated time line for installation.<sup>4</sup> The Scope of Work document then further explains that the data must be electronically recorded hourly. The government believes that the hourly recordings were meant to be transmitted hourly once that technology became available. Regardless, it is now three years after it was represented to Judge Arterton that Ionia would have pollution control equipment that could record and transmit hourly waste oil readings shore-side. Vigilant Marine represents that the technology is currently feasible. Thus, it should be a requirement of probation.

The government suggests that the Independent Environmental Consultant (IEC), Mr. Richard Wigger, should verify compliance with the hourly recording and transmitting requirement. For Ionia vessels already permitted to enter the United States via the Special Master's recommendation this should occur at either the next U.S. port call or scheduled IEC audit, whichever occurs first. For the M/T PLOUTOS and M/T ESTIA confirmation by the IEC should occur prior to Special Master permitting them to sail to the United States. It is also suggested that a report on the status of implementation be made at the next Special Master's hearing.

Sincerely,



David E. O'Connell  
Trial Attorney  
Environmental Crimes Section  
United States Department of Justice

Cc: Michael Chalos, Esq.  
AUSA Anthony Kaplan  
LCDR Channing Burgess  
CDR Mooradian  
James Sanborn  
Capt. Richard Wigger  
Patrick Norton

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<sup>2</sup> Transcript of Violation of Probation Hearing dated January 10, 2008 at pgs. 161-162

<sup>3</sup> Scope of Work. See Docket Entry #282 at pg. 5.

<sup>4</sup> One desired feature of the SWOMS concept is that the system have the capability to transmit the data automatically to the corporate headquarters, without the need for human intervention. IONIA has represented that, through its efforts to obtain such a feature for its SWOMS system, the technology and hardware does not currently commercially exist to achieve this, but is under development. Within one year of the effective date of this order, IONIA will either have this technology installed, or, alternatively, submit for the Special Master's consideration an updated assessment and projection for the availability and feasibility of such technology. The Special Master will then make a recommendation to the Court on how to proceed. See Docket Entry #282 at pg. 5.